

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PALM BEACH DIVISION

CASE NO. 9:24-cv-80499-RLR/REINHART

JTC SKYWAVE INVESTMENTS LTD,  
and HARALD McPIKE,

Plaintiffs,

v.

ANDREW N. MART, DEANNA BOIES,  
LUMINESCENCE LLC, LUMINESCENCE  
LLC, and LUMINASTRA LLC,

Defendants.

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**PLAINTIFFS' EVIDENTIARY OBJECTION TO EXHIBIT A TO  
DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS**

Plaintiffs JTC Skywave Investments Ltd. and Harald McPike ("Plaintiffs") respectfully submit this evidentiary objection with respect to Exhibit A to Defendants' Reply in Support of Motion to Dismiss. The evidentiary objection relates to ECF No. 37-1 ("Exhibit A").

1. Exhibit A is a Memorandum of Law submitted more than six years ago in a now-concluded case filed by Mr. McPike in a different court, and which involved different parties, facts, and legal issues. In that litigation, Mr. McPike vigorously disputed the claims and arguments made in Exhibit A.<sup>1</sup>

2. Defendants in this case do not claim to have personal knowledge of that case, the underlying facts, the arguments made in that filing, or whether those arguments had merit.

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<sup>1</sup> Plaintiff Harald McPike's Opposition to Defendant's Motion in Limine No. 4, Regarding Defendant's Allegations of Spoliation of Evidence, Case No. 1:17-cv-562 (TSE/JFA) (E.D. Va.), ECF No. 242.

Plaintiffs therefore object to Exhibit A on the ground that there is no evidentiary basis for consideration of Exhibit A by this Court.

3. To the extent that Exhibit A purports to set forth facts, it is hearsay and therefore not admissible. Fed. R. Evid. 802.

4. To the extent that Exhibit A is attorney argument, it is not evidence. *See e.g. Bryant v. United States Steel Corp.*, 428 F. App'x 895, 897 (11th Cir. 2011) (“counsel’s argument is not evidence”); *Likollari v. United States AG*, 352 F. Appx 335, 337 (11th Cir. 2009) (“an attorney’s arguments are not evidence”).

5. That Exhibit A was filed in another action, in another court, does not permit the Court to take judicial notice of the facts and arguments in that document because a court cannot take judicial notice of “the truth of the matters asserted in the other litigation.” *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994) (quoting *Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc.*, 969 F.2d 1384, 1388-89 (2d Cir.1992)).

6. Without personal knowledge of the facts or conduct of the other litigation, Defendants’ counsel has no legitimate grounds to claim that Mr. McPike was “credibly accused” of misconduct in that case. [Defendants’ Reply, ECF No. 37, at p. 5.]

7. Plaintiffs therefore object to Exhibit A and respectfully submit that Exhibit A and Defendants’ argument based upon Exhibit A should not be considered by the Court in connection with Defendants’ Motion to Dismiss.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Objection was served on this 28<sup>th</sup> day of June, 2024 upon all counsel of record via the Court's CM/ECF electronic filing system.

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